

A **PARALLEL MEDIA GOLF (ASIA) LTD**

v.

ASIAN PGA BHD

B HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB SAID AHMAD J
[CIVIL SUIT NO: D8-22-198-2005]
7 DECEMBER 2006

C **CIVIL PROCEDURE:** *Judgment - Claim for repayment of loan - Leave to enter final judgment - Fact of loan and of defendant's liability reflected in defendant's accounts - Whether there was admission of fact as to defendant's indebtedness - Whether plaintiff entitled to final judgment - Rules of the High Court 1980, O. 27 r. 3*

D In this appeal, the only issue that arose was whether the plaintiff who had granted a friendly loan to the defendant and had claimed for its repayment, was entitled to enter a final judgment pursuant to O. 27 r. 3 Rules of the High Court 1980. The evidence showed that the fact of the grant of the loan and of the defendant's liability thereof was reflected in the defendant's audited accounts for the financial years 1998, 1999 and 2000, as well as in its unaudited account for the financial year 2001. The evidence notwithstanding, the learned Senior Assistant Registrar ruled that it was not proof of the defendant's indebtedness, and in the circumstances dismissed the plaintiff's application under O. 27 r. 3 aforesaid. The plaintiff appealed and argued that on the facts and in the circumstances it was entitled to rely on the notes and statements in the audited and unaudited accounts to obtain final judgment against the defendant.

G **Held (allowing appeal and setting aside registrar's order):**

- H (1) An admission of fact may be expressed or implied. A court will only grant leave to enter final judgment under O. 27 r. 3 where a party has made a plain enough admission sufficient to enable the other party to obtain judgment. (para 8)
- I (2) From the audited accounts, the defendant's contention is inconsistent with the clear words of the admission of liability to the interest free loan. Notwithstanding the second paragraph therein, it does not negate that the defendant acknowledged the debt as its non-current liability continuously

until the unaudited 2001 account. No explanation was given by the defendant as to why it was reflected as a loan if it was not. (para 12)

- (3) The audited accounts of the defendant for the years 1998, 1999 and 2000 together with the unaudited 2001 account amounts to an admission of fact of the defendant's indebtedness to the plaintiff. It shows the defendant has no defence to this action. (para 13)

[Order accordingly.]

Legislation referred to:

Companies Act 1965, s. 169(5)

Rules of the High Court 1980, O. 27 r. 3

For the plaintiff - Bahari Yeow; M/s Lee Hishamuddin Allen & Gledhill

For the defendant - Ajit Kumar; M/s Ajit & Co

Reported by WA Sharif

JUDGMENT

Abdul Wahab Said Ahmad J:

[1] The plaintiff (dahulu dikenali sebagai Asian P.G.A. Tour Limited), a company incorporated in Hong Kong, claims a sum of RM2,047,327.43 (USD535,249) advanced to the defendant.

[2] The plaintiff business includes but is not limited to the acquisition, exploitation management, marketing, publishing, advertising, promotion, sale and development of the commercial and media rights associated with professional golf tours, events, tournaments and competition staged within certain specified territories.

[3] The defendant (dahulu dikenali sebagai APGA Berhad), was the representative body of professional golfers' tournament in Asia and was a member of the PG Tours International Federation. In such capacity, the defendant ran, managed and sanctioned professional golf tournaments in Asia which were collectively called the Asian PGA Tour.

- A [4] The advance of USD535,249 was to be interest free with a moratorium granted for the years 1998 to 2001. The plaintiff had by letter dated 8 July 2004 demanded the repayment of the loan.
- B [5] The plaintiff had applied pursuant to O. 27 r. 3 of the RHC for leave to enter final judgment against the defendant. The Senior Assistant Registrar dismissed the application and hence this appeal.
- C [6] Order 27 r. 3 provides that where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to.
- D [7] The plaintiff relied essentially upon the Audited Accounts of the defendant in exhs. "P2", "P3" and "P4" as an admission of fact of the defendant's indebtedness to the plaintiff.
- E [8] Admission of fact may be expressed or implied. A court will only grant leave to enter final judgment under O. 27 r. 3 where a party has made a plain admission sufficient enough to enable the other party to obtain judgment.
- F [9] The defendant had by affidavit of Ramlan bin Haron averred that the monies were not meant to be a loan but provided to the defendant to generate business for the plaintiff. To fortify it he referred to the audited accounts 'P2' and 'P3' which carried a statement that "Asia PGA Tour Ltd has undertaken to provide continuing financial support to the company to enable the company to meet its obligations and liabilities as and when they fall due and to carry on its business operations as a going concern".
- G [10] Premised on this statement the defendant contended that the admission of facts in the audited accounts are unclear. Further as the averment was never rejected or explained it tantamount to admission to the fact asserted therein.
- H [11] Note 10 to the balance sheet for the financial year 1998 on non current liabilities itemized advance from a member a sum of RM2,049,936. Likewise for financial year 1999 and 2000 except for year 2000 it is recorded as advance from special member of the company. For the unaudited account for year 2001 it is recorded under long term liabilities as an advance from a member.
- I The note reads:

10. Advance From A Member

We advance from a member, Asian PGA Tour Ltd, is unsecured and interest free. Asia PGA Tour Ltd has confirmed that it will not demand for repayment of the advance within the next two years from the balance sheet date.

Asian PGA Tour Ltd has undertaken to provide continuing financial support to the Company to enable the Company to meet its obligations and liabilities as and when they fall due and to carry on its business operations as a going concern.

[12] From the audited accounts, the defendant's contention is inconsistent with the clear words of the admission or liability to the interest free loan. Notwithstanding the second paragraph, it does not negate that the defendant acknowledged the debt as its non current liability continuously until the unaudited 2001 account. No explanation in the affidavit of Ramlan bin Haron as to why it was reflected as a loan if it was not.

[13] I am satisfied that the audited accounts of the defendant for the years 1998, 1999 and 2000 together with the unaudited 2001 account amounts to an admission of fact of the defendant's indebtedness to the plaintiff. It shows the defendant has no defence to this action. Encik Ramlan bin Harun as director of defendant had solemnly declared pursuant to s. 169(5) of the Companies Act that the accounts are correct and is therefore binding upon the company. This includes the acknowledgment of defendant's liability to the interest free loan.

[14] For the aforesaid reasons, the order of the senior assistant registrar is set aside and final judgment entered against the defendant with costs.

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